

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Ashley Adams., et al
Plaintiffs,

v.

Brad Livingston, et al
Defendants.

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Civil Action No. 6:13-cv-712

Jury Demanded

DEFENDANTS ROBERT LEONARD'S ANSWER AND JURY DEMAND

NOW COMES Defendant Robert Leonard, by and through the Officer of the Attorney General, and submit this Answer and Jury Demand to Plaintiffs' Amended Complaint. In support thereof, the Defendant respectfully offers the following:

STATEMENT OF THE CASE

Plaintiffs are the purported surviving relatives of the deceased offenders. In their Petition, Plaintiffs assert various claims under federal and state law against the Defendants. Specifically, Plaintiffs assert federal claims under 42 U.S.C. § 1983 for violating their deceased relatives' constitutional rights to be free from cruel and unusual punishment in violation of the Eighth and Fourteenth Amendment. Plaintiffs sue Defendants University of Texas Medical Branch (UTMB) and TDCJ for violations of the Americans with Disabilities Act, the Americans with Disabilities Act Amendments Act, and the Rehabilitation Act for allegedly failing to provide reasonable accommodations to offender Kenneth Wayne James. (D.E. #1 at 28-29). Plaintiffs sue Defendants Livingston, Thaler, Stephens, Eason and Miller pursuant to 42 U.S.C. § 1983 for deliberate indifference to offenders Rodney Adams, Kenneth Wayne James and Douglas Hudson's serious medical needs. (D.E. #1 at 27-28). Plaintiffs sue Defendant Leonard,

in his individual capacity for violating offender James's constitutional rights as an agent and official representative of TDCJ. (D.E. #8 at 28-34).

Plaintiffs allege that offenders, James died from hyperthermia. (D.E. #1 at 23-26). Defendant is sued in his individual capacity for punitive and compensatory damages.

ANSWER TO PLAINTIFF'S COMPLAINT

Pursuant to FED. R. CIV. P. 8(b), and for the express purpose of requiring the plaintiffs to meet their burden of proof herein, the defendant denies each and every allegation contained in Plaintiffs' Amended Complaint, except those expressly admitted herein.

STATEMENT OF CLAIMS

1. Defendant denies the following paragraphs: 1, 3, 26, 179, 194, 225, 228, 249, and 251.
2. Defendant admits the following paragraph: 6 (venue is proper in the Eastern District), 27 (admit Leonard was a Correctional Officer employed by the Texas Department of Criminal Justice); 177 (admit I notified other officers of James).
3. Defendant has insufficient information to form a belief about the truth of the averments contained in the following paragraphs: 2, 4, 5, 88-12, 14-21, 21-25, 28-38, 39-115, 116-171, 172-178, 180-193, 195-212, 214-217, 219-223, 226-227, 229-248, 250, 252-258.

GENERAL DENIAL AND AFFIRMATIVE DEFENSES

1. Defendant asserts that any claim premised upon the doctrine of *respondeat superior* will not support a claim of constitutional dimension under 42 U.S.C. § 1983. Defendant further asserts that any claim premised upon negligence will not support a claim under 42 U.S.C. § 1983.

2. Defendant denies that Adams, James and Hudson were deprived of any right, privilege, or immunity granted or secured by the Constitution, the laws of the United States, and/or the laws of the State of Texas.
3. Defendant denies that he was deliberately indifferent to plaintiffs' health or safety. Defendant asserts that he did not have personal involvement sufficient to establish liability regarding the events alleged in Plaintiffs' suit.
4. Defendant asserts that at all times relevant to this suit, he acted with the good faith belief that his actions were proper under the Constitution and laws of the United States and the State of Texas. Defendant further asserts that he acted, at all relevant times, in a manner both consistent with James's clearly established constitutional rights and objectively reasonable in light of all surrounding circumstances. Defendant further asserts that at all times relevant to this lawsuit, he performed discretionary acts in good faith and within the course and scope of his authority as a correctional officer employed by the State of Texas. Finally, Defendant asserts that any act or failure to act was not willful, wanton negligent, or performed with a conscious indifference or reckless disregard for the safety of Offender James.
5. Defendant denies that either official or sovereign immunity has been waived under the Texas Human Resource Code, Chapter 121 for any purpose. Defendant hereby expressly asserts that he is entitled to qualified, good-faith immunity from suit.
6. Defendant states that Plaintiffs have failed to fully exhaust administrative procedures as required by the Prisoner Litigation Reform Act, 42 U.S.C. §

1997e(a).

7. Defendants deny that sovereign immunity has been waived under the Texas Tort Claims Act §101.021 of the Civil Practice and Remedies Code.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants Robert Leonard urges this Court to deny the plaintiffs any and all relief demanded in this complaint and to grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

GREG ABBOTT

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/s/Bruce R. Garcia

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ATTORNEYS FOR DEFENDANTS

**Gilmore, Dodd, Edwards, Matthews, Goings,
Raines, Flowers, Seda and Leonard**

NOTICE OF ELECTRONIC FILING

I, **BRUCE R. GARCIA**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing **Defendant Robert Leonard's Answer and Jury Demand** in accordance with the Electronic Case Files System of the Eastern District of Texas, on this the 12th day of March, 2014.

/s/Bruce R. Garcia
BRUCE R. GARCIA
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **BRUCE R. GARCIA**, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendant Robert Leonard's Answer and Jury Demand** has been served electronically via Eastern District to Plaintiffs' Lead Attorney, Jeff Edwards at jeff@edwards-law.com, Defendant UTMB's Lead Attorney, Kim Coogan at kim.coogan@texasattorneygeneral.gov, and Defendants', Livingston, Thaler and Stephens Lead Attorney Demetri Anastasiadis at demetri.anastasiadis@texasattorneygeneral.gov on the 12th day of March, 2014.

/s/Bruce R. Garcia
BRUCE R. GARCIA
Assistant Attorney General